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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11
12 JOSE JACOBO, et al.,
13 Plaintiffs,
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15 v.
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17 ROSS STORES, INC., et al.,
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19 Defendants,
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Case No.: CV 15-4701 MWF (AGR_x)
CLASS ACTION
PROTECTIVE ORDER

22
23 **1. A. PURPOSES AND LIMITATIONS**

24 Discovery in this action is likely to involve production of confidential,
25 proprietary, or private information for which special protection from public disclosure
26 and from use for any purpose other than prosecuting this litigation may be warranted.
27 This Order does not confer blanket protections on all disclosures or responses to
28 discovery and the protection it affords from public disclosure and use extends only to the

1 limited information or items that are entitled to confidential treatment under the
2 applicable legal principles. As set forth in Section 12.3, below, this Protective Order
3 does not entitle parties to file confidential information under seal; Civil Local Rule 79-5
4 sets forth the procedures that must be followed and the standards that will be applied
5 when a party seeks permission from the court to file material under seal.

6 **B. GOOD CAUSE STATEMENT**

7 This action is likely to involve and the Parties' pricing lists and/or other valuable
8 development, commercial, and/or financial, technical and/or proprietary information for
9 which special protection from public disclosure and from use for any purpose other than
10 prosecution of this action is warranted. Such confidential and proprietary materials and
11 information consist of, among other things, confidential business or financial
12 information, information regarding confidential business practices, or other confidential
13 research, development, or commercial information (including information implicating
14 privacy rights of third parties), information otherwise generally unavailable to the
15 public, or which may be privileged or otherwise protected from disclosure under state or
16 federal statutes, court rules, case decisions, or common law. Accordingly, to expedite
17 the flow of information, to facilitate the prompt resolution of disputes over
18 confidentiality of discovery materials, to adequately protect information the parties are
19 entitled to keep confidential, to ensure that the parties are permitted reasonable
20 necessary uses of such material in preparation for and in the conduct of trial, to address
21 their handling at the end of the litigation, and serve the ends of justice, a protective order
22 for such information is justified in this matter.

23 24 **2. DEFINITIONS**

25 2.1 Action: *Jacobo v. Ross Stores, Inc.*, CV 15-4701 MWF (AGRx).

26 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
27 information or items under this Order.
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1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
2 it is generated, stored or maintained) or tangible things that qualify for protection under
3 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
4 Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
6 support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
9 OR “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY.”

10 2.6 Disclosure or Discovery Material: all items or information, regardless of the
11 medium or manner in which it is generated, stored, or maintained (including, among
12 other things, testimony, transcripts, and tangible things), that are produced or generated
13 in disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
16 expert witness or as a consultant in this Action.

17 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
18 or Items: extremely sensitive Confidential Information, disclosure of which to another
19 party or non-party (e.g., a competitor) would create a substantial risk of serious harm
20 that could not reasonably be avoided by less restrictive means.

21 2.9 House Counsel: attorneys who are employees of a party to this Action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 2.10 Non-Party: any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

26 2.11 Outside Counsel of Record: attorneys who are not employees of a party to
27 this Action but are retained to represent or advise a party to this Action and have
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1 appeared in this Action on behalf of that party or are affiliated with a law firm which has
2 appeared on behalf of that party, and includes support staff.

3 2.12 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.14 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
11 their employees and subcontractors.

12 2.15 Protected Material: any Disclosure or Discovery Material that is designated
13 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES
14 ONLY.”

15 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 18 **3. SCOPE**

19 The protections conferred by this Stipulation and Order cover not only Protected
20 Material (as defined above), but also (1) any information copied or extracted from
21 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
22 Material; and (3) any testimony, conversations, or presentations by Parties or their
23 Counsel that might reveal Protected Material.

24 Any use of Protected Material at trial shall be governed by the orders of the trial
25 judge. This Order does not govern the use of Protected Material at trial.
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1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
4 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
5 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
6 and (2) final judgment herein after the completion and exhaustion of all appeals,
7 rehearings, remands, trials, or reviews of this Action, including the time limits for filing
8 any motions or applications for extension of time pursuant to applicable law.
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10 **5. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 Party or Non-Party that designates information or items for protection under this Order
13 must take care to limit any such designation to specific material that qualifies under the
14 appropriate standards. The Designating Party must designate for protection only those
15 parts of material, documents, items, or oral or written communications that qualify so
16 that other portions of the material, documents, items, or communications for which
17 protection is not warranted are not swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that
19 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
20 to unnecessarily encumber the case development process or to impose unnecessary
21 expenses and burdens on other parties) may expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it
23 designated for protection do not qualify for protection, that Designating Party must
24 promptly notify all other Parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this
26 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise or ordered,
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1 Disclosure or Discovery Material that qualifies for protection under this Order must be
2 clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the
6 Producing Party affix at a minimum, the legend “CONFIDENTIAL” OR “HIGHLY
7 CONFIDENTIAL – ATTORNEYS EYES ONLY” to each page that contains Protected
8 Material. If only a portion or portions of the material on a page qualifies for protection,
9 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
10 appropriate markings in the margins).

11 A Party or Non-Party that makes original documents available for inspection need
12 not designate them for protection until after the inspecting Party has indicated which
13 documents it would like copied and produced. During the inspection and before the
14 designation, all of the material made available for inspection shall be deemed “HIGHLY
15 CONFIDENTIAL – ATTORNEYS EYES ONLY.” After the inspecting Party has
16 identified the documents it wants copied and produced, the Producing Party must
17 determine which documents, or portions thereof, qualify for protection under this Order.
18 Then, before producing the specified documents, the Producing Party must affix the
19 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES
20 ONLY” to each page that contains Protected Material. If only a portion or portions of
21 the material on a page qualifies for protection, the Producing Party also must clearly
22 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

23 (b) for testimony given in depositions that the Designating Party identify the
24 Disclosure or Discovery Material on the record, before the close of the deposition all
25 protected testimony.

26 (c) for information produced in some form other than documentary and for any
27 other tangible items, that the Producing Party affix in a prominent place on the exterior
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1 of the container or containers in which the information is stored the legend
 2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY.”
 3 If only a portion or portions of the information warrants protection, the Producing Party,
 4 to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 6 designate qualified information or items does not, standing alone, waive the Designating
 7 Party’s right to secure protection under this Order for such material. Upon timely
 8 correction of a designation, the Receiving Party must make reasonable efforts to assure
 9 that the material is treated in accordance with the provisions of this Order.

10 11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 13 confidentiality at any time that is consistent with the Court’s Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 15 process under Local Rule 37.1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall be on the
 17 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
 18 to harass or impose unnecessary expenses and burdens on other parties) may expose the
 19 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
 20 the confidentiality designation, all parties shall continue to afford the material in
 21 question the level of protection to which it is entitled under the Producing Party’s
 22 designation until the Court rules on the challenge.

23 24 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 26 disclosed or produced by another Party or by a Non-Party in connection with this Action
 27 only for prosecuting, defending or attempting to settle this Action. Such Protected
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1 Material may be disclosed only to the categories of persons and under the conditions
 2 described in this Order. When this Action has been terminated, a Receiving Party must
 3 comply with the provisions of section 13 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
 5 location and in a secure manner that ensures that access is limited to the persons
 6 authorized under this Order.

7 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 8 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
 9 may disclose any information or item designated "CONFIDENTIAL" only to:

10 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
 11 employees of said Outside Counsel of Record to whom it is reasonably necessary to
 12 disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of the
 14 Receiving Party to whom disclosure is reasonably necessary for this Action;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 16 reasonably necessary for this Action and who have signed the "Acknowledgment and
 17 Agreement to Be Bound" (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
 21 whom disclosure is reasonably necessary for this Action and who have signed the
 22 "Acknowledgment and Agreement to Be Bound" (Exhibit A) or, in the case of mock
 23 jurors, a substantially similar form that may redact the case name;

24 (g) the author or recipient of a document containing the information or a custodian
 25 or other person who otherwise possessed or knew the information;

26 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action
 27 to whom disclosure is reasonably necessary provided: (1) the deposing party requests
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1 that the witness sign the form attached as Exhibit a hereto; and (2) they will not be
 2 permitted to keep any confidential information unless they sign the “Acknowledgment
 3 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
 4 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
 5 depositions that reveal Protected Material may be separately bound by the court reporter
 6 and may not be disclosed to anyone except as permitted under this Protective Order;

7 (i) any mediator or settlement officer, and their supporting personnel, mutually
 8 agreed upon by any of the parties engaged in settlement discussions; and

9 (j) insurance carriers and insurance adjusters who have signed the
 10 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS EYES
 12 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
 13 writing by the Designating Party, a Receiving Party may disclose any information or
 14 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
 16 employees of said Outside Counsel of Record to whom it is reasonably necessary to
 17 disclose the information for this Action;

18 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure
 19 is reasonably necessary for this Action and who have signed the “Acknowledgment and
 20 Agreement to Be Bound” (Exhibit A);

21 (c) the court and its personnel;

22 (d) court reporters and their staff;

23 (e) professional jury or trial consultants, mock jurors, and Professional Vendors to
 24 whom disclosure is reasonably necessary for this Action and who have signed the
 25 “Acknowledgment and Agreement to Be Bound” (Exhibit A) or, in the case of mock
 26 jurors, a substantially similar form that may redact the case name;

27 (f) the author or recipient of a document containing the information or a custodian
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1 or other person who otherwise possessed or knew the information;

2 (g) employees of Ross Stores, Inc., for purposes of documents designated as
3 “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” by Ross Stores, Inc., in
4 this Action;

5 (h) any mediator or settlement officer, and their supporting personnel, mutually
6 agreed upon by any of the parties engaged in settlement discussions; and

7 (i) insurance carriers and insurance adjusters who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

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10 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
11 **IN OTHER LITIGATION**

12 If a Party is served with a subpoena or a court order issued in other litigation that
13 compels disclosure of any information or items designated in this Action as
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY”
15 that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to issue
19 in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Protective Order. Such notification shall include a copy of this Protective
21 Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with the
25 subpoena or court order shall not produce any information designated in this action as
26 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” before a determination by the
27 court unless the Party has obtained the Designating Party’s permission. The Designating
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1 Party shall bear the burden and expense of seeking protection in that court of its
 2 confidential material and nothing in these provisions should be construed as authorizing
 3 or encouraging a Receiving Party in this Action to disobey a lawful directive from
 4 another court.

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 6 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
 7 **PRODUCED IN THIS LITIGATION**

8 (a) The terms of this Order are applicable to information produced by a Non-Party
 9 in this Action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 10 ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in
 11 connection with this litigation is protected by the remedies and relief provided by this
 12 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
 13 seeking additional protections.

14 (b) In the event that a Party is required, by a valid discovery request, to produce a
 15 Non-Party's confidential information in its possession, and the Party is subject to an
 16 agreement with the Non-Party not to produce the Non-Party's confidential information,
 17 then the Party shall:

18 (1) promptly notify in writing the Requesting Party and the Non-Party that some
 19 or all of the information requested is subject to a confidentiality agreement with a Non-
 20 Party;

21 (2) promptly provide the Non-Party with a copy of the Protective Order in this
 22 Action, the relevant discovery request(s), and a reasonably specific description of the
 23 information requested; and

24 (3) make the information requested available for inspection by the Non-Party, if
 25 requested.

26 (c) If the Non-Party fails to seek a protective order from this court within 14 days
 27 of receiving the notice and accompanying information, the Receiving Party may produce
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1 the Non-Party's confidential information responsive to the discovery request. If the Non-
2 Party timely seeks a protective order, the Receiving Party shall not produce any
3 information in its possession or control that is subject to the confidentiality agreement
4 with the Non-Party before a determination by the court. Absent a court order to the
5 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
6 court of its Protected Material.

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8 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
10 Protected Material to any person or in any circumstance not authorized under this
11 Protective Order, the Receiving Party must immediately (a) notify in writing the
12 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
13 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
14 unauthorized disclosures were made of all the terms of this Order, and (d) request such
15 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
16 attached hereto as Exhibit A.

17
18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection, the
22 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
24 may be established in an e-discovery order that provides for production without prior
25 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
26 parties reach an agreement on the effect of disclosure of a communication or information
27 covered by the attorney-client privilege or work product protection, the parties may
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1 incorporate their agreement in a protective order submitted to the court.
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3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. No Party waives any right it otherwise
7 would have to object to disclosing or producing any information or item on any ground
8 not addressed in this Protective Order. Similarly, no Party waives any right to object on
9 any ground to use in evidence of any of the material covered by this Protective Order.

10 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
11 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
12 under seal pursuant to a court order authorizing the sealing of the specific Protected
13 Material at issue. If a Party's request to file Protected Material under seal is denied by
14 the court, then the Receiving Party may file the information in the public record unless
15 otherwise instructed by the court.
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17 **13. FINAL DISPOSITION**

18 After the final disposition of this Action, within 60 days of a written request by
19 the Designating Party, each Receiving Party must return all Protected Material to the
20 Producing Party or destroy such material. As used in this subdivision, "all Protected
21 Material" includes all copies, abstracts, compilations, summaries, and any other format
22 reproducing or capturing any of the Protected Material. Whether the Protected Material
23 is returned or destroyed, the Receiving Party must submit a written certification to the
24 Producing Party (and, if not the same person or entity, to the Designating Party) by the
25 60 day deadline that (1) identifies (by category, where appropriate) all the Protected
26 Material that was returned or destroyed and (2) affirms that the Receiving Party has not
27 retained any copies, abstracts, compilations, summaries or any other format reproducing
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1 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
2 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
3 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
4 expert reports, attorney work product, and consultant and expert work product, even if
5 such materials contain Protected Material. Any such archival copies that contain or
6 constitute Protected Material remain subject to this Protective Order as set forth in
7 Section 4 (DURATION).

8 14. Any violation of this Order may be punished by any and all appropriate
9 measures including, without limitation, contempt proceedings and/or monetary
10 sanctions.

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12 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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14 DATED: July 12, 2016

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18 ALICIA G. ROSENBERG

19 United States Magistrate Judge
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I
 have read in its entirety and understand the Protective Order that was issued by the
 United States District Court for the Central District of California in the case of *Jacobo v.
 Ross Stores, Inc.*, CV 15-4701 MWF (AGRx). I agree to comply with and to be bound
 by all the terms of this Protective Order and I understand and acknowledge that failure to
 so comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that is
 subject to this Protective Order to any person or entity except in strict compliance with
 the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____